

lawyer and his personal qualities. His nomination languished until the end of the Bush administration. He waited almost 1,000 days for a vote that never came.

The criteria our Democratic friends cited to block Mr. Keisler's nomination then clearly show the court is even less busy now. For example, the seat to which Ms. Millett is nominated is not a judicial emergency—far from it. The number of appeals at the court is down almost 20 percent, and the written decisions per active judge are down almost 30 percent.

In addition to these metrics, the DC Circuit has provided another. The chief judge of the court, who was appointed to the bench by President Clinton, provided an analysis showing that oral arguments for each active judge are also down almost 10 percent since Mr. Keisler's nomination was blocked.

These analyses show that not only is the court less busy in absolute terms now than it was then, it is less busy in relative terms as well, when one takes into account the number of active judges serving on the court. The court's caseload is so low, in fact, that it has canceled oral argument days in recent years because of lack of cases. After we confirmed the President's last nominee to the DC Circuit just a few months ago—and by the way we confirmed him unanimously—one of the judges on the court said that if more judges were confirmed there would not be enough work to go around. So if the court's caseload clearly does not meet their own standards for more judges, why are Senate Democrats pushing to fill more seats on a court that doesn't need them? What is behind this push to fill seats on the court that is canceling oral argument days for lack of cases, and according to the judges who serve on it will not have enough work to go around if we do?

We don't have to guess. Our Democratic colleagues and the administration's supporters have been actually pretty candid about it. They have admitted they want to control the court so it will advance the President's agenda. As one administration ally put it, "The President's best hope for advancing his agenda is through executive action, and that runs through the DC Circuit."

Let me repeat, the reason they want to put more judges on the DC Circuit is not because it needs them, but because "The President's best hope for advancing his agenda is through executive action, and that runs through the DC Circuit."

Another administration ally complained that the court "has made decisions that have frustrated the President's agenda." Really? The court is evenly divided between Republican and Democratic appointees. According to data compiled by the Federal courts, the DC Circuit has ruled against the Obama administration in administrative matters less often than it ruled against the Bush administration.

Let me say that again. According to data compiled by the Federal courts, the DC Circuit has ruled against the Obama administration in administrative matters less often than it ruled against the Bush administration. So it is not that the court has been more unfavorable to President Obama than it was to President Bush. Rather, the administration and its allies seem to be complaining that the court has not been favorable enough. Evidently they do not want any meaningful check on the President. You see, there is one in the House of Representatives, but the administration can circumvent that with aggressive agency rulemaking. That is if the DC Circuit allows it to do so.

A court should not be a rubberstamp for any administration, and our Democratic colleagues told us again and again during the Bush administration that the Senate confirmation process should not be a rubberstamp for any administration. For example, they said President Bush's nomination of Miguel Estrada to the DC Circuit was "an effort to pack the Federal courts." And they filibustered his nomination—seven times, in fact.

We have confirmed nearly all of President Obama's judicial nominees. As I said, we confirmed a judge to the DC Circuit unanimously just a few months ago. This year we have confirmed 34 circuit and district court judges. At this time in President Bush's second term the Senate had confirmed only 14.

Let me say that again. This year we have confirmed 34 circuit and district court judges. At this time in President Bush's second term the Senate had confirmed only 14 of those nominees. In fact, we confirmed President Obama's nominees even during the Government shutdown.

In writing to then-Judiciary Committee Chairman Arlen Specter to oppose the nomination of Peter Keisler, Senate Democrats said:

Mr. Keisler should under no circumstances be considered—much less confirmed . . . before we first address the very need for the judgeship . . . and deal with the genuine judicial emergencies identified by the judicial conference.

That course of action ought to be followed here too. Senator GRASSLEY has legislation that will allow the President to fill seats on courts that actually need judges. The Senate should support that legislation, not transparent efforts to politicize a court that doesn't need judges in an effort to create a rubberstamp for the administration's agenda.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF MELVIN WATT TO BE DIRECTOR OF THE FEDERAL HOUSING FINANCE AGENCY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The legislative clerk read the nomination of MELVIN L. WATT, of North Carolina, to be Director of the Federal Housing Finance Agency.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12 noon will be equally divided and controlled between the two leaders or their designees.

The assistant majority leader.

LETTER OF RESIGNATION

Mr. DURBIN. Mr. President, first, I ask unanimous consent that an official letter of resignation as mayor of Newark, NJ, from Senator-elect CORY BOOKER of New Jersey be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEWARK, NJ,
October 30, 2013.

ROBERT P. MARASCO,
City Clerk, City of Newark, Broad Street, Newark, NJ.

DEAR MR. MARASCO: Serving as the mayor of Newark, New Jersey has been one of the greatest honors of my life. Since taking office more than seven years ago, I've had the privilege to work closely with countless residents, municipal employees, elected officials, community leaders and others to move Newark forward. It was not easy, but together, we have brought incredible positive change to our city and set the stage for this momentum to continue in the coming years.

On Thursday, October 31, 2013 at noon, I will be sworn in as one of New Jersey's United States Senators. Therefore, effective Thursday, October 31, 2013 at 12:00 a.m., I am officially resigning as mayor of Newark.

While I am leaving one position, I am not leaving Newark. I am proud to be able to now represent Newark and our entire state as a United States Senator. My level of dedication, passion and service will not falter as I serve New Jersey. Our best days lie ahead, and together, we will continue to achieve great things.

The work goes on.

Sincerely,

CORY A. BOOKER,
Mayor.

Mr. DURBIN. Mr. President, I listened carefully to the statement that was just made by the Republican leader. It is a shame what is about to occur on the Senate floor if he has his way. The President has submitted the name of a nominee to serve on the DC Circuit Court. This is not just another court. Some view it as the second most important court in the land. Some of the most technical and challenging legal cases come before this court. The judges who serve there are called on not just to do routine things but to do extraordinary things on a regular basis. That is why the appointments to this court are so critically needed when